

**THE CONSTITUTION OF ZAMBIA (AMENDMENT)
BILL, 2016**

MEMORANDUM

The object of this Bill is to amend the Constitution of Zambia so as to—

- (a) revise the Bill of Rights to include civil, political, economic, social, cultural, environmental, further and special rights;
- (b) entrench the supremacy of the Constitution, Articles 4 and 5 of the Constitution, the electoral systems for the election of a President and Members of Parliament, the tenure of office of a President and vacancy in the office of President, the election of a Vice-President as a running mate to a presidential candidate, the provisions on the appointment, responsibilities and tenure of Ministers and Provincial Ministers, and the provisions relating to the amendment of the Constitution;
- (c) revise the provisions relating to the declaration of war, state of public emergency, threatened state of public emergency and national disasters;
- (d) revise the provisions on amendment of the Constitution; and
- (e) provide for matters connected with, or incidental to, the foregoing.

A. MWANSA,
Solicitor-General

N.A.B. 37, 2016
23rd May, 2016

A BILL

ENTITLED

An Act to amend the Constitution of Zambia.

ENACTED by the Parliament of Zambia

Enactment

1. This Act may be cited as the Constitution of Zambia (Amendment) (No.) Act, 2016, and shall be read as one with the Constitution of Zambia, in this Act referred to as the Constitution.

Short title

Cap. 1

5 2. The Constitution is amended by the repeal of Part III and the substitution therefor of the following:

Repeal and replacement of Part III

PART III

BILL OF RIGHT

Status, Application and Interpretation

10 11. (1) The Bill of Rights, as provided for in this Part, is fundamental to democracy and constitutionalism and shall be the basis of Zambia's social, political, legal, economic and cultural policies and State action.

Status of Bill of Rights

(2) The rights and freedoms set out in this Bill of Rights—

15 (a) are inherent in each individual;

(b) protect the dignity of the person;

(c) include rights and freedoms which are consistent with this Constitution but not expressly provided for, except those that are repugnant to the morals and values of the people of Zambia; and

20

(d) are subject to the limitations, derogations and restrictions provided for in Articles 53, 54 and 55.

N.A.B. 37, 2016

Recognition of role of civil society	12. The State shall recognise the role of civil society in the promotion and protection of the Bill of Rights.	
Development of jurisprudence and Bill of Rights interpretation	13. (1) Where legislation does not give effect to a right or freedom, the Constitutional Court shall develop human rights jurisprudence.	5
	(2) A court, the Human Rights Commission, a State institution, a person or body shall interpret a right or freedom in a manner consistent with Articles 11, 266, 267 and 272.	

Civil and Political Rights

Protection from discrimination	14. A person shall not be discriminated against, except under a law that provides for affirmative action.	10
Right to life	15. (1) A person has the right to life.	
	(2) The life of a person begins at conception.	
	(3) A person shall not be deprived of life intentionally, except for a capital offence the sentence of which is death, subject to limitations, defences and extent prescribed.	15
	(4) A court shall not impose a sentence of death on a convict—	
	(a) who is pregnant;	
	(b) who is a child; or	
	(c) where there are extenuating circumstances relating to the commission of the offence.	20
Freedom of person	16. A person has the right to freedom of the person which includes the right not to be deprived of that freedom arbitrarily.	
Security of person and protection from inhuman treatment	17. (1) A person has the right to security of the person which includes the right not to be subjected to human trafficking.	25
	(2) A person has the right not to be—	
	(a) subjected to torture; or	
	(b) treated or punished in a cruel, inhuman or degrading manner.	
Protection from slavery, servitude and forced labour	18. (1) A person shall not be held in slavery or servitude.	30
	(2) A person shall not be required to perform forced labour.	

THE CONSTITUTION OF ZAMBIA (AMENDMENT)

BILL, 2016

MEMORANDUM

The object of this Bill is to amend the Constitution of Zambia so as to—

- (a) revise the Bill of Rights to include civil, political, economic, social, cultural, environmental, further and special rights;
- (b) entrench the supremacy of the Constitution, Articles 4 and 5 of the Constitution, the electoral systems for the election of a President and Members of Parliament, the tenure of office of a President and vacancy in the office of President, the election of a Vice-President as a running mate to a presidential candidate, the provisions on the appointment, responsibilities and tenure of Ministers and Provincial Ministers, and the provisions relating to the amendment of the Constitution;
- (c) revise the provisions relating to the declaration of war, state of public emergency, threatened state of public emergency and national disasters;
- (d) revise the provisions on amendment of the Constitution; and
- (e) provide for matters connected with, or incidental to, the foregoing.

A. MWANSA,
Solicitor-General

19. A person has the right to privacy, which includes the right not to—
Protection of
privacy of
person, home,
property and
communication

(a) be searched;

(b) have that person's home or property searched;

5 (c) have that person's possessions seized;

(d) have information relating to that person's family, health
status or private affairs unlawfully required or revealed;
or

(e) have the privacy of that person's communications infringed.

10 20. (1) A person has the right to freedom of conscience, belief
and religion. Freedom of
conscience,
belief and
religion

(2) A person has the right, individually or in community with
others, publicly or privately, to manifest any religion or belief through
worship, observance, practice or teaching, including the observance
15 of a day of worship.

(3) Clause (2) does not extend to conduct or statements that
infringe the enjoyment of freedom of conscience, belief and religion
by others or that may incite religious wars.

(4) A person shall not be compelled to act, or engage in an act
20 that is, contrary to that person's conscience, belief or religion.

(5) A person shall not be deprived of access to an institution or
a facility on the basis of that person's belief or religion.

21. (1) A person has the right to freedom of expression which
includes— Freedom of
expression

25 (a) freedom to hold an opinion;

(b) freedom to receive or impart information or ideas;

(c) freedom of artistic creativity;

(d) academic freedom; and

(e) freedom of scientific and technological research, as
30 prescribed.

(2) Clause (1) does not extend to—

(a) conduct or statements which incite war, genocide, crimes
against humanity or other forms of violence; or

(b) statements which—

35 (i) vilify or disparage others; or

(ii) incite hatred.

Access to information	<p>22. (1) A person has the right of access to information held by the State or another person which is lawfully required for the exercise or protection of a right or freedom.</p> <p>(2) A person has the right to demand the correction of false or misleading information recorded or published about that person. 5</p> <p>(3) The State shall proactively publicise information that is in the public interest or affects the welfare of the Nation.</p>
Freedom of media	<p>23. (1) Subject to clause (3), the freedom and independence of electronic, broadcasting, print and other forms of media is guaranteed. 10</p> <p>(2) The State shall not exercise control over or interfere with a person engaged in—</p> <p>(a) broadcasting or the production or circulation of publications; or</p> <p>(b) the dissemination of information through any media. 15</p> <p>(3) The State may license broadcasting and other electronic media where it is necessary to regulate signals and signal distribution.</p> <p>(4) Public media shall—</p> <p>(a) independently determine the editorial content of their broadcasts or communications; and 20</p> <p>(b) afford fair opportunity for the presentation of divergent views and dissenting opinions.</p>
General political rights	<p>24. A citizen has a right to participate in political activities.</p>
Freedom of association	<p>25. (1) A person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association. 25</p> <p>(2) A person shall not be compelled to join an association.</p>
Right to assemble, demonstrate, picket and petition	<p>26. A person has the right, peacefully and unarmed, to assemble, demonstrate or picket and present petitions to State organs and State institutions. 30</p>
Freedom of movement and residence	<p>27. A person has the right to freedom of movement, which includes the right—</p> <p>(a) as a citizen, to a passport; and</p> <p>(b) to enter, remain, leave and reside anywhere in the Republic, subject to the imposition of restrictions on the entry, movement or residence of persons who are not citizens, as prescribed. 35</p>

28. A person who is granted asylum or refuge in Zambia has a right not to be returned to the country of origin or a third country if that person has a well founded fear of persecution, in the country of origin or a third country, which justifies that person's request for asylum or refuge. Non refoulement for asylum seekers and refugees
29. (1) A person has the right, individually or in association with others, to own property in any part of Zambia. Acquisition and protection of property
- (2) The State or a person shall not arbitrarily deprive a person of property.
- 10 (3) The State shall not compulsorily acquire a person's property unless the acquisition is in the public interest.
- (4) Where a person's property is compulsorily acquired in accordance with clause (3)—
- 15 (a) the State shall promptly, adequately and effectively compensate that person; and
- (b) that person, or any person who has an interest in or right over that property, has a right of access to a court.
- (5) Where the State compulsorily acquires land from occupants who have acquired the land in good faith and who do not hold title to the land, the State shall provide for compensation to be paid to the occupants, as prescribed.
- 20 (6) The rights under this Article do not extend to property unlawfully acquired.
- 25 30. All persons are equal before the law and have the right to equal protection and benefit of the law. Equality before law
31. A person has the right to administrative action that is expeditious, lawful, reasonable and procedurally fair. Fair administration
32. (1) A person has the right to access justice. Access to justice
- (2) A person has the right to execute a judgment against the State after one year of the delivery of the judgment.
- 30 (3) A court shall not order security for costs on matters of public interest litigation.
33. A person who is suspected of committing an offence is entitled to— Rights of suspects
- 35 (a) remain silent; and
- (b) be informed in a language which that person understands of the
- (i) right to remain silent; and
- (ii) consequences of remaining silent.

Rights of
persons in
custody

34. (1) A person shall not be held in custody without being charged.

(2) A person who is held in custody retains that person's rights and freedoms, except to the extent that a right or freedom is incompatible with being in custody. 5

(3) A person who is held in custody is entitled to petition for a writ of *habeas corpus*.

Rights of
accused
persons and
detainees

35. Subject to Articles 52, 53, 54, 55 and 56, an accused person or a detainee has the right –

(a) to remain silent; 10

(b) to be informed in a language which that person understands of the

(i) right to remain silent; and

(ii) consequences of remaining silent;

(c) to be informed, as soon as reasonably practicable, of the reasons for the arrest or detention 15

(i) in a language which that person understands;

(ii) in the case of a visually impaired person, in Braille or tactile diagrams;

(iii) in the case of a deaf person, in sign language; or 20

(iv) in another appropriate form of communication;

(d) not to be compelled to make a confession or an admission;

(e) to be held separately from persons who are serving a sentence;

(f) to be released on bond, unless there is compelling reason to the contrary; and 25

(g) to be brought before a court

(i) within fortyeight hours after being arrested or detained;

(ii) not later than the end of the first court day after the expiry of the fortyeight hours, if the fortyeight hours expire outside ordinary court hours; 30

(iii) as speedily as possible, if that person is arrested or detained far from a court;

(iv) for trial within ninety days of being arrested; or 35

(v) to be released on bail, as prescribed.

36. (1) A person has the right to have a dispute decided timely and to have a fair hearing before a court or, where appropriate, an independent and impartial tribunal. Fair trial

(2) An accused person or a detainee has the right to a fair trial, which includes the right –

- (a) to be presumed innocent until the contrary is proved;
- (b) to be informed, as soon as is reasonably practicable, of the charge with sufficient details to answer the charge;
- (c) to have adequate time and facilities to prepare a defence;
- 10 (d) to be present when being tried, unless the conduct of the accused person or detainee makes it impossible for the trial to proceed;
- (e) to have the trial commenced and judgment given without unreasonable delay;
- 15 (f) to compensation for wrongful detention or imprisonment;
- (g) to choose, and be represented by, a legal practitioner and to be informed of this right before taking plea;
- (h) to have a legal practitioner assigned to the accused person by the State, at public expense, if substantial injustice would otherwise result;
- 20 (i) to be informed promptly of the right in paragraph (h);
- (j) to remain silent during the trial and not to testify during the proceedings;
- (k) to challenge and adduce evidence;
- 25 (l) not to have illegally obtained evidence admissible at the trial;
- (m) not to be compelled to give self incriminating evidence;
- (n) to have, without payment, the assistance of an interpreter if the accused person cannot understand the language used at the trial and, in the case of a deaf person, a sign language interpreter;
- 30 (o) not to be charged, tried or convicted for an act or omission that was not, at the time it was committed or omitted, an offence under a written law;
- 35 (p) not to be tried for an offence in respect of an act or omission for which that person had previously been acquitted or convicted;

- (q) to the benefit of the least severe of the prescribed punishment, if the prescribed punishment for an offence was changed between the time that offence was committed and the time of sentencing; and
- (r) of appeal to, or review by, a higher court. 5
- (3) Where this Article requires information to be given to a person, that information shall be given—
- (a) in a language which that person understands;
- (b) in the case of a visually impaired person, in Braille or tactile diagrams; 10
- (c) in the case of a deaf person, in sign language; or
- (d) in another appropriate form of communication.
- Right to retrial and re-examination of evidence 37. (1) A person who is convicted of an offence and whose appeal has been dismissed by the highest court to which that person is entitled to appeal, may petition the Supreme Court for a retrial if 15 new and compelling evidence is available.
- (2) Where there is compelling evidence that a person may be innocent of an offence, the State may petition the Supreme Court to reexamine that evidence and determine whether that person committed the offence or not. 20
- Equality of both gender 38. (1) Women and men have the right to equal treatment and opportunities.
- (2) Women and men have an equal right to inherit, own, use, administer and control property.
- (3) A woman and a man have equal rights in the marriage and at the dissolution of the marriage. 25
- (4) Without limiting a right or freedom, women and men have the right to—
- (a) reproductive health, including family planning and access to related information and education; 30
- (b) acquire, change or retain their nationality, including the right to change the nationality of their child if this is in the best interest of the child;
- (c) choose residence and domicile;
- (d) guardianship or adoption of a child; and 35
- (e) choose a family name.

**Economic, Social, Cultural and
Environmental Rights**

39. (1) A person has the right, as prescribed, to—
- 5 (a) health care services;
(b) decent housing;
(c) food of acceptable standard;
(d) clean and safe water;
(e) decent sanitation;
(f) social protection; and
10 (g) education.
- (2) A person shall not be denied emergency medical treatment.
40. A person has the right to choose a trade, an occupation or
a profession, subject to limitations imposed by law.
41. (1) A person has the right to employment and fair labour
15 practices.
- (2) A person in employment has the right to—
- (a) fair remuneration commensurate to the productivity or
size of the enterprise;
(b) decent working conditions;
20 (c) a pension benefit commensurate with that person's office,
salary and length of service; and
(d) form, join or participate in the activities and programmes
of a trade union, including going on a lawful strike.
- (3) An employer has the right to—
- 25 (a) form and join an employers' organisation;
(b) participate in the activities and programmes of an
employers' organisation; and
(c) lock out.
- (4) A trade union and an employers' organisation have the right
30 to—
- (a) determine their own administration, programmes and
activities; and
(b) form or join a federation.
- Economic
and
social
rights
- Choice of
trade,
occupation
or
profession
- Labour
relations

Consumer rights	42. A consumer has the right to— (a) goods and services of reasonable quality and standard; (b) information necessary to gain full benefit from goods and services; (c) compensation for loss or injury arising from a defect in goods or services; and (d) fair, honest and decent advertising of goods and services.	5
Language, culture and intellectual property rights	43. (1) Subject to Article 258, a person has the right to use a language of that person's choice. (2) A person who belongs to a cultural or linguistic community has the right, with other members of that community to— (a) enjoy that person's culture; and (b) form, join or maintain cultural and linguistic associations. (3) A person shall not be compelled to— (a) perform, observe or participate in cultural practices or rites; or (b) form, join, contribute, maintain or pay allegiance to a cultural or linguistic association. (4) The State shall— (a) recognise the role of science, technology and indigenous technology in the development of the Nation; and (b) support, promote and protect intellectual property rights.	10 15 20
Environment	44. A person has the right to a safe, clean and healthy environment.	
Progressive realisation of economic, social, cultural and environmental rights	45. (1) The State shall take reasonable measures for the progressive realisation of economic, social, cultural and environmental rights. (2) Where a claim is made against the State on the nonrealisation of an economic, social, cultural or environmental right, it is the responsibility of the State to show that the resources are not available. (3) The Constitutional Court shall not interfere with a decision by the State concerning the allocation of available resources for the progressive realisation of economic, social, cultural and environmental rights.	25 30 35

Further and Special Rights

46. The older members of society are further entitled to the right to—

Further rights for older members of society

- 5 (a) participate fully in the affairs of society;
(b) personal development;
(c) independent living; and
(d) social protection, as prescribed.

47. (1) The State shall recognise and protect the family as the natural and fundamental unit of society and the necessary basis of the social order.

Further protections and rights relating to marriage and family

(2) A person who is nineteen years of age or older has the right to choose a spouse of the opposite sex and marry.

(3) The State shall—

- 15 (a) ensure the right of women to adequate maternity leave;
(b) ensure the availability of adequate paternity leave;
(c) ensure the availability of maternal health care and child health care; and
(d) promote the establishment of childcare facilities.

(4) A pregnant or nursing woman has the right to a noncustodial sentence, except as a measure of last resort where she poses a danger to the community.

48. (1) A child is equal before the law.

Special and further rights for children

(2) In all actions and decisions concerning a child, the best interest of the child shall be the primary consideration.

25 (3) A child's mother and father, whether married to each other or not, have an equal duty to protect and provide for the child.

(4) A child is further entitled to the following civil and political rights:

- 30 (a) to acquire a nationality;
(b) to registration of birth and to a name;
(c) not to be subjected to corporal punishment or other form of violence, cruel or inhuman treatment in the home, school or an institution responsible for the care of children;
35 (d) to be protected in times of armed conflict and not to be recruited and used in armed conflict;
(e) not to take part in hostilities;

- (f) to protection from all forms of sexual exploitation or abuse;
- (g) not to be subjected to harmful cultural rites and practices;
- (h) not to be incarcerated on account of the mother's incarceration;
- (i) not to be held in custody, except as a measure of last resort, in which case the child shall be— 5
- (i) held in custody for a period of not more than fortyeight hours;
 - (ii) kept separate from adults in custody;
 - (iii) accorded legal assistance by the State;
 - (iv) treated in a manner and be kept in conditions that take into account the child's gender and age; and 10
 - (v) tried in a Children's Court;
- (j) to protection of the child's identity from exposure by the media or a person during criminal proceedings; 15
- (k) not to be discriminated against, neglected or abused;
- (l) not to be engaged in work that is exploitative or likely to be hazardous or adverse to the child's health or welfare;
- (m) not to marry or be forced to marry;
- (n) to know of decisions affecting the child, to express an opinion and have that opinion taken into account, having regard to the age and maturity of that child and the nature of the decision; and 20
- (o) to diversion programmes.
- (5) A child is further entitled to the following economic and social rights: 25
 - (a) parental care or, where the child is separated from its parents, to appropriate alternative care;
 - (b) free primary and secondary education;
 - (c) survival and development; 30
 - (d) adequate nutrition, shelter, basic health care services, social protection and social services; and
 - (e) a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
- (6) The State shall protect a child— 35
 - (a) with special needs;
 - (b) who is orphaned;

- (c) whose parent or guardian is in prison;
 (d) whose parent or guardian is unfit to look after the child;
 (e) with disability;
 (f) who is a refugee; and
 5 (g) who is homeless or lives or spends time on the streets.
49. The youth are further entitled to the right to—
- (a) personal development;
 (b) participate in governance;
 (c) access gainful employment; and
 10 (d) participate in the social, economic, political and other spheres of national life.
50. (1) Subject to clause (2), a person shall not engage a young person in an occupation or employment which would prejudice the health, education or interfere with the physical, mental or moral
 15 development of that young person.
- (2) A young person may be employed for a wage, as prescribed.
51. A person with disability is further entitled to the right to—
- (a) education and facilities that integrate the person into society;
 20 (b) access to the physical environment, information, communication, public facilities and services, places and transportation;
 (c) access materials, facilities and assistive devices for persons with disability;
 25 (d) use sign language, Braille or other appropriate means of communication;
 (e) be addressed or referred to in an enactment or officially, publicly or privately, in a manner that is not demeaning, derogatory or discriminatory;
 30 (f) equal opportunities in cultural, political, economic and social activities;
 (g) tax free materials and assistive devices;
 (h) personal development and independent living; and
 35 (i) social protection, as prescribed.

Further
rights for
youth

Further
protection
of
young
person

Further
rights for
persons
with
disabilities

NonDerogable Rights and Freedoms, Limitations and Derogations

Nonderogable rights and freedoms	<p>52. Despite any other provision, a law shall not derogate from the following rights and freedoms:</p> <ul style="list-style-type: none"> (a) security of person and protection from inhuman treatment; (b) protection from slavery, servitude or forced labour; (c) freedom of conscience, belief and religion; (d) the right to a writ of <i>habeas corpus</i>; (e) <i>non-refoulement</i> as provided for in Article 28; and (f) a right to a fair trial. 	5 10
Limitations on rights and freedoms	<p>53. A right or freedom is limited by—</p> <ul style="list-style-type: none"> (a) a limitation, restriction or qualification expressly set out in the Article or clause containing that right or freedom; (b) the limitations and restrictions specified in this Article and Article 54; and (c) the limitations and restrictions provided in a law of general application as provided in Article 54, which do not negate the core or the essential content of the right or freedom and is reasonable and justifiable in a democratic society, taking into account— <ul style="list-style-type: none"> (i) the nature of the right; (ii) the purpose of the limitation or restriction; (iii) the extent of the limitation or restriction; and (iv) whether there are alternative means to achieve the required purpose. 	15 20 25
Limitations and restrictions under law	<p>54. A law that limits or restricts a right or freedom is valid only to the extent that the law—</p> <ul style="list-style-type: none"> (a) is reasonably required in the interest of public defence and security, public safety, public order, public morality, public health, national, provincial and local spatial planning, taxation or the development, management and utilisation of natural and mineral resources; (b) relates to the acquisition of property to secure the development, management or utilisation of the property for a purpose beneficial to the community or the public generally, upon the payment of due compensation; 	30 35

- (c) relates to a contract, lease, trust, settlement, deed, letter of administration, tenancy, mortgage, charge, pledge, bill of sale or title deed to land or other instrument;
- (d) provides for licensing of activities;
- 5 (e) is required to enforce a judgment or an order of a court or tribunal; or
- (f) imposes restrictions and duties on defence and security officers, other public officers and Constitutional office holders.
- 10 **55.** An act or measure taken, under a law, during war, state of public emergency, threatened state of public emergency or a national disaster shall not be inconsistent with this Part—
- Derogation of rights and freedoms during emergency or national disaster
- (a) if the act or measure taken is reasonably justifiable for dealing with the war, state of public emergency, threatened state of public emergency or national disaster;
- 15 and
- (b) if the law provides for the necessary detention of persons during a war, state of public emergency or threatened state of public emergency, subject to Article 56.
- 20 **56.** (1) Where a person is detained during a war, state of public emergency or threatened state of public emergency, the following shall apply:
- Measures applicable during war or emergency
- (a) that person shall, as soon as is reasonably practicable, and in any case not more than fourteen days after the commencement of the detention or restriction, be furnished with a statement, in writing, specifying, in detail, the grounds of the restriction or detention
- 25
- (b) not more than seven days after the commencement of the detention a notification shall be published in the *Gazette*—
- 30
- (i) giving particulars of the place of detention; and
- (ii) stating the provision of the law under which the detention is authorised;
- (c) if that person so requests, at any time during the period of the detention or not later than twentyone days after the commencement of the detention and at intervals of not more than thirty days thereafter, the case shall be reviewed by the Constitutional Court;
- 35

(d) that person shall be afforded reasonable facilities to consult a legal practitioner of that person's choice who shall be permitted to make representations to the authority by which the detention was ordered or to the Constitutional Court; and

5

(e) at the hearing of the case by the Constitutional Court, that person may challenge the—

(i) detention; or

(ii) validity of the declaration of war, state of public emergency or threatened state of public emergency and the measures taken during that period.

10

(2) The President may refer to the Constitutional Court for review the case of a person who has been or is detained under a detention order under any law.

15

(3) The Constitutional Court shall make a decision on a matter reviewed by it under this Article.

Enforcement of Bill of Rights

Enforcement of Bill of Rights

57. (1) A person who alleges that a provision of the Bill of Rights has been or is being contravened, in relation to the person, may apply for redress to the Constitutional Court or to another court which that person has immediate access to.

20

(2) A person may bring an action against the violation of another person's rights and freedoms.

Report on realisation of rights and freedoms

58. The President shall, each year, when addressing the National Assembly, report on the measures taken by the State in the realisation of the Bill of Rights.

25

Repeal of Article 79

3. The Constitution is amended by the repeal of Article 79.

Insertion of Part XVA

4. The Constitution is amended by the insertion immediately after Part XV, of the following new Part.

30

PART XVA

DECLARATION OF WAR, STATE OF PUBLIC EMERGENCY, THREATENED
STATE OF PUBLIC EMERGENCY AND NATIONAL DISASTERS

5 198. (1) The President may, in consultation with Cabinet, declare war between the Republic and another country. Declaration of war

(2) A declaration made in accordance with clause (1) shall—

(a) as soon as is reasonably practicable, be published in the *Gazette*; and

(b) continue in force until the cessation of hostilities.

10 199. (1) The President may, in consultation with Cabinet, declare a state of public emergency when there is a state of war, disorder, an invasion, insurrection or other similar situation. Declaration of state of public emergency and threatened state of public emergency

(2) The President may, in consultation with Cabinet, where a situation exists which, if allowed to continue, may lead to a state of public emergency, declare that a threatened state of public emergency exists.

15 (3) A declaration made in accordance with this Article shall—

(a) be effective prospectively;

20 (b) as soon as is reasonably practicable, be published in the *Gazette*; and

(c) continue in force—

25 (i) for a period not exceeding twenty-one days from the date of the declaration, unless the National Assembly resolves to extend the period of the state of public emergency or threatened state of public emergency in accordance with clause (4); or

30 (ii) until the President revokes the declaration of the state of public emergency or threatened state of public emergency.

(4) The National Assembly may, by a resolution supported by the votes of not less than two-thirds of the Members of Parliament, taken by secret ballot, extend the period of a state of public emergency or threatened state of public emergency for periods not exceeding three months.

Laws on
state of
public
emergency
and
threatened
state of
public
emergency
and
restrictions

200. (1) A law relating to a state of public emergency or threatened state of public emergency, shall not—

(a) indemnify the State or a person in respect of an unlawful act committed during the state of public emergency or threatened state of public emergency; or 5

(b) be enforced after the cessation of the state of public emergency or threatened state of public emergency.

(2) An action or measure taken in consequence of a declaration of a state of public emergency or threatened state of public emergency shall not indemnify the State or a person in respect of an unlawful act committed during that period. 10

Validity
of
emergency

201. A person may apply to the Constitutional Court for a hearing—

(a) on the validity of—

(i) a declaration of a state of public emergency or threatened state of public emergency; or 15

(ii) an extension of a declaration of a state of public emergency or threatened state of public emergency; or

(b) whether any legislation relating to, action or measure taken during, a state of public emergency or threatened state of public emergency was reasonable. 20

Declaration
of
national
disasters

202. (1) The President may, in consultation with Cabinet, declare that a national disaster exists.

(2) A declaration made in accordance with clause (1) shall, as soon as is reasonably practicable, be published in the *Gazette*. 25

(3) An action or measure taken in consequence of a declaration of a national disaster shall not indemnify the State or a person in respect of an unlawful act committed during that period.

Insertion of
new Part
XIXA

5. The Constitution is amended by the insertion, immediately after Part XIX, of the following: 30

PART XIXA

AMENDMENT OF CONSTITUTION

301. (1) A provision of this Constitution may be amended in accordance with this Article, Article 302 or 303.

Amendment
to
Constitution

5 (2) A Bill to amend an Article shall have the sole purpose of amending that Article and shall not provide for any other matter.

302. (1) A Bill to amend an Article or group of Articles, except a Bill to amend the Bill of Rights and the Articles specified in Article 303, shall be done in accordance with this Article.

Amendment
without
referendum

10 (2) A Bill referred to in clause (1), shall be published in the *Gazette* and laid before the National Assembly, for first reading, after thirty days from the date of its publication.

(3) A Bill referred to in clause (1) shall be passed by the National Assembly by the votes of at least twothirds of the Members of Parliament at the second and third reading stages of the parliamentary process.

20 303. (1) A Bill to amend the Bill of Rights, Article 1, Article 4, Article 5, Article 47 (1) and (2), Article 106, Article 110(1), Article 116, Article 117, Article 301, Article 302 or this Article shall be by a referendum and in accordance with this Article.

Referendum
for
amendment
of
certain
Articles,
repeal and
replacement
of
Constitution

(2) A Bill referred to in clause (1) shall be published in the *Gazette* and laid before the National Assembly, for first reading, after thirty days from the date of its publication.

25 (3) The Speaker shall, after the first reading, refer the Bill to the Electoral Commission for a referendum to be held on the Bill.

(4) The Electoral Commission shall, within one hundred and twenty days of receipt of the Bill, referred to the Commission in accordance with clause (3), hold a referendum on the Bill, as prescribed.

30 (5) If, in a referendum, at least fifty percent of the registered voters vote, and more than fifty percent vote in favour of the amendment, the National Assembly shall proceed to pass the Bill.

6. Article 266 of the Constitution is amended by the insertion, in the appropriate places, of the following definitions:

Amendment
of Article
266

35 " affirmative action " includes a measure designed to ameliorate an inequity or remedy a systematic denial or infringement of a right or freedom;

“ amend ” means to replace, vary or add to an Article or group of Articles but does not include the repeal and replacement of the entire Constitution;; and

“ non-refoulement ” means the right not to be returned to the country of origin or a third country if that person has a wellfounded fear of persecution, in the country of origin or a third country, which justifies that person’s request for asylum or refuge;. 5